IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1590 of 2001
(Old No. 2411 of 1984)

Cantonment Board, Ranikhet through
The Cantonment Executive Officer, Ranikhet, Almora

.....Appellant

Versus

1. The State of U.P.
2. Anand Ballabh Tiwari (since died)
3. Harish Chandra Tewari
   Both S/o Sri Narain Dutt, R/o Sadar Bazar, Ranikhet, Distt. Almora

.....Opp. Parties

Dated: December 8, 2006

HON'BLE DHARAM VEER, J.

No one appears on behalf of the appellant, hence I appoint Sri D.C.S. Rawat, Advocate as Amicus Curie on behalf of the appellant to assist the Court.

2. Heard Sri D.C.S. Rawat, ld. Counsel for the appellant, ld. AGA for the State and Sri Chetan Joshi, ld. Counsel for Respondent No.3.

3. This is an appeal against the judgment and order dated 12.03.1984 passed by learned Sessions Judge, Almora Camp, Ranikhet in Criminal Revision No.25 of 1983, *Anand Ballabh Tewari and another Vs. State of U.P. and another,* arising out of Criminal Complaint dated 10.01.1983 under Sections 210/213 of the Cantonment Act, 1924.

4. It was held by learned Sessions Judge in his judgment that under Section 266 of the Cantonment Act, 1924 (*hereinafter will be referred to the Cantonment Act*)

only a person authorized by the Board can file a complaint. For the sake of convenience, Section 266 of the Act is reproduced as under:-

> ***226. Prosecution – [(1)] Save as otherwise expressly provided in this Act, no court shall proceed to the trial of any offence made punishable by or under this Act, other than an offence specified in Schedule IV, except on the complaint of, or upon information received from, the [Board] concerned or a person authorized by the [Board] by a general or special order in this behalf.***

5. Learned counsel for the appellant Sri D.C.S. Rawat (Amicus Curie) contended that the Executive Officer is covered under the definition of Section 266 of the Act but after the entire reading of the said Section, it reveals that the Executive Office is not covered in the definition of a **'person'**. In Section 266 of the Act, a complaint can be entertained on information received from the Board concerned or a person authorized by the Board or a general or a special order in this behalf. In the present case, the Executive Officer concerned is not authorized by any general or special order to file the complaint against the respondents. Hence, I do not find any illegality or infirmity in the order passed by learned Sessions Judge.

6. Learned counsel for the respondent No.3 Sri Chetan Joshi contended that as per Section 378-(1)(b) of Cr.P.C., no appeal is maintainable against the order of the Sessions Judge in which the Sessions Judge passes the order in the revisional jurisdiction for acquittal. For the sake of convenience, Section 378(1)(b) of Cr.P.C. is reproduced as under:-

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision]

7. The argument advanced by learned counsel for the respondent No. 3 is that the appeal is not maintainable against the order passed by the learned Sessions Judge in a revisional jurisdiction for acquittal.

8. AS per Section 378(1)(b) of Cr.P.C., it is clear that the appeal against the order passed by learned Sessions Judge in the Revision is not maintainable. Hence the appeal is liable to be dismissed on this ground also. In the present case, there are two respondents and against one of the respondents i.e. Respondent No.2-Anand Ballabh Tewari, the appeal has been abated against him on 19.7.2004 by the order of this Court as there is a report of Police Station, Ranikhet and on the basis of that report, the appeal has been abated.

9. In view of the facts and circumstances stated above, the appeal is devoid of merit and is hereby dismissed. No order as to costs.

(Dharam Veer, J.)

Rajeev Dang